

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

WILLIAM BURCH,

CASE NO. 5:11-cv-03485 EJD

Plaintiff(s),

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND; DENYING AS  
MOOT DEFENDANT'S MOTION TO  
DISMISS**

v.

ABN AMRO MORTGAGE GROUP, INC.,  
et. al.,

[Docket Item No(s). 19, 27]

Defendant(s).

Presently before the court are two matters: (1) Defendant Pleasanton Valley Mortgage's ("Pleasanton") submitted Motion to Dismiss the First Amended Complaint ("FAC") (see Docket Item No. 19) , and (2) Plaintiff William Burch's Motion to Remand this action to the Superior Court. See Docket Item No. 27). The court finds the Motion to Remand appropriate for decision without oral argument pursuant to Local Rule 7-1(b). The hearing and Case Management Conference scheduled for November 4, 2011, are therefore vacated. As discussed below, Plaintiff's Motion to Remand will be granted, rendering moot Pleasanton's Motion to Dismiss.

**I. BACKGROUND**

Plaintiff originally filed his Complaint in the Superior Court of California, County of Santa Clara, on June 7, 2011. See Not. of Removal, Docket Item No. 1, at ¶ 2. On July 15, 2011, Defendant CitiMortgage, Inc. ("CitiMortgage") removed this action to federal court as the

1 Complaint presented a federal question in the form of a claim under the Real Estate Settlement  
2 Procedures Act of 1974 (“RESPA”), 12 U.S.C. § 2601 et. seq. See id., at ¶ 4.

3 Once here, CitiMortgage filed a Motion to Dismiss the complaint on July 22, 2011. See  
4 Docket Item No. 3. However, before CitiMortgage’s motion could be heard, Plaintiff filed a First  
5 Amended Complaint (“FAC”) on August 5, 2011, which eliminated the previously-asserted RESPA  
6 claim and left only state-law causes of action. See Docket Item No. 12. CitiMortgage then filed a  
7 separate Motion to Dismiss the FAC. See Docket Item No. 18. That motion is currently scheduled  
8 for hearing on February 10, 2012.

9 For its part, Defendant Pleasanton Valley Mortgage also filed a Motion to Dismiss the FAC  
10 (see Docket Item No. 19), which the court submitted for decision on October 11, 2011. See Docket  
11 Item No. 45. The court has not yet ruled on that motion in anticipation of the current Motion to  
12 Remand.

## 13 II. DISCUSSION

14 At issue is whether this action should be remanded to the Superior Court because the FAC no  
15 longer presents a federal question under 28 U.S.C. § 1331.

16 An examination of jurisdictional principles is required. Only those state court actions that  
17 could have been originally filed in federal court may be removed. 28 U.S.C. § 1441(a) (“Except as  
18 otherwise expressly provided by Act of Congress, any civil action brought in a State court of which  
19 the district courts of the United States have original jurisdiction, may be removed by the  
20 defendant.”); see also, e.g., Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) (“Only state-court  
21 actions that originally could have been filed in federal court may be removed to federal court by  
22 defendant.”). Accordingly, the removal statute provides two basic ways in which a state court action  
23 may be removed to federal court: (1) the case presents a federal question, or (2) the case is between  
24 citizens of different states. 28 U.S.C. §§ 1441(a), (b). It falls upon the defendant to show the basis  
25 for federal jurisdiction. Nishimoto v. Federman-Bachrach & Assoc., 903 F.2d 709, 712 (9th Cir.  
26 1990). The complaint as it existed at time of removal dictates whether removal jurisdiction is  
27 proper. Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1065 (9th Cir. 1979).

1 But the statutes allowing for removal jurisdiction are strictly construed against removal.  
2 Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108 (1941). “If at any time before final  
3 judgment it appears that the district court lacks subject matter jurisdiction, the case shall be  
4 remanded.” 28 U.S.C. § 1447(c). Any doubt as to removability are resolved in favor of remanding  
5 the case to state court. Shamrock, 313 U.S. at 108-109.

6 Generally, post-removal amendments cannot be utilized to destroy federal question  
7 jurisdiction once it has attached. Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc., 159 F.3d  
8 1209, 1213 (9th Cir. 1998). “Where a case has been properly removed, jurisdiction over it will not  
9 be defeated by later changes or developments in the suit, such as changes in citizenship, in parties, in  
10 the amount involved or in the cause[s] of action pleaded.” Southern Pac. Co. v. Haight, 126 F.2d  
11 900, 903 (9th Cir. 1942). Thus, a plaintiff may not completely dissolve federal jurisdiction and  
12 compel remand by tactically amending a complaint to eliminate a federal question. See Williams v.  
13 Costco Wholesale Corp., 471 F.3d 975, 976 (9th Cir. 2006); see also Sparta Surgical Corp., 159 F.3d  
14 at 1213.

15 Whether to exercise supplemental jurisdiction over remaining pendent state law claims is a  
16 matter of discretion. Nishimoto, 903 F.2d at 715. Under 28 U.S.C. § 1367(c)(2), the district court  
17 may decline to exercise jurisdiction and remand an action after weighing certain factors, such as the  
18 stage of the litigation, the values of judicial economy, convenience, fairness, and comity. Id. (citing  
19 Carnegie-Mellon University v. Cohill, 484 U.S. 343, 349-50 (1988)). “In a case in which all federal  
20 law claims are eliminated before trial, the balance of these factors will generally point toward  
21 declining to exercise jurisdiction over the remaining state law claims.” Id.

22 Here, as indicated above, the original Complaint alleged a violation of RESPA which  
23 provided a basis for subject matter jurisdiction in this court under 28 U.S.C. § 1331. The currently-  
24 operative pleading in the form of the FAC does not contain federal claims. In fact, Plaintiff’s eight  
25 causes of action now arise from state statutory or common law claims. While the timing and effect  
26 of the amendment are certainly suspicious, there is no clear evidence that Plaintiff removed his  
27 federal claim solely to divest the Court of its subject matter jurisdiction. Moreover, considering this  
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1 matter is in the early stages of litigation and this court has no specialized familiarity with this  
 2 particular case or the state-law issues raised, the Court finds this action should be remanded to the  
 3 state court. See 28 U.S.C. § 1367(c)(2). Plaintiff's Motion to Remand will therefore be granted.<sup>1</sup>


### 4 III. ORDER

5 Based on the foregoing, the hearing and Case Management Conference scheduled for  
 6 November 4, 2011, are VACATED.

7 Plaintiff's Motion to Remand (Docket Item No. 27) is GRANTED. Pleasanton's Motion to  
 8 Dismiss is (Docket Item No. 19) is DENIED AS MOOT. The Clerk shall immediately remand this  
 9 case to the Superior Court of the State of California, County of Santa Clara, and close this file.

10 **IT IS SO ORDERED.**

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 12 Dated: October 31, 2011

  
 EDWARD J. DAVILA  
 United States District Judge

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28 <sup>1</sup> Although CitiMortgage argues otherwise, diversity jurisdiction cannot be found here.  
Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373-74 (1978).